

(1999) 11 AP CK 0035
In the Andhra Pradesh High Court
Case No : C.R.P. No. 384 of 1994

Buddana Subba Rao

APPELLANT

Vs

Maring Tatalu @ Muniyya and Another

RESPONDENT

Date of Decision : 15-11-1999

Acts Referred:

Limitation Act, 1963 — Section 12
Specific Relief Act, 1963 — Section 6

Citation : (2000) 2 ALT 798

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : K.V. Satyanarayana, for the Appellant; V.V.L.N. Sarma, for the Respondent

Final Decision : Allowed

Judgement

G. Bikshapathy, J.—The Civil Revision Petition is filed against the judgment and decree of learned Principal District Munsif, Tadepalligudem in OS. No. 477 of 1994.

2. The petitioner is the defendant. Plaintiff filed the suit u/s 6 of the Specific Relief Act seeking the possession of the suit schedule property. It is the case of the plaintiff that they have been in possession and enjoyment of the suit schedule property for a long time and however on 29-10-1986 they were dispossessed without any authority of law. Therefore, they sought for judgment and decree for repossession of the suit schedule property. The matter was contested by the defendant. However, the lower Court basing on the pleadings available on record framed the following issues:

- (i) Whether the suit is bad for non-joinder of necessary and proper parties?
- (ii) Whether the suit is not in proper form?
- (iii) Whether the valuation and Court fee paid are not correct?

(iv) Whether the plaintiffs are entitled to the relief of possession?

(v) To what relief?

3. The lower Court held that the suit was filed within 6 months and that the plaintiff was entitled for decree as prayed for. Aggrieved by the said judgment and decree the present C.R.P. is filed by the defendant.

4. The learned Counsel appearing for the petitioner-defendant, apart from raising number of other issues attacking the judgment and decree, mainly concentrated on the issue relating to limitation prescribed u/s 6 of the Specific Relief Act. The learned Counsel for the petitioner submits that even according to the plaintiff he was dispossessed on 29-10-1986 as per the averment made in the plaint and the suit ought to have been filed within 6 months. But however in the instant case the suit was filed on 29-4-1987 i.e., one day beyond the period of 6 months fixed u/s 6 of the Specific Relief Act. He relies on the judgment of the learned single Judge of this Court in Sunkara Laxmaiah and Others Vs. Vadlapudi Venkateswara Rao (died) and Others, wherein a reference was made in respect of a pronote. In the said case the pronote was executed on 2-11-1968 whereas the suit was filed on 2-11-1971. The learned Judge observed that it is beyond limitation viz., beyond 3 years. Taking clue from the above judgment, the learned Counsel submits that in the instant case same yardstick is liable to be applied and if it is applied the suit ought to have been filed before 29-4-1987 and thus the suit is barred by limitation.

5. The learned Counsel for the respondents however submits that the judgment of the learned single Judge requires reconsideration. The learned Judge did not consider the scope of Section 12 of the Limitation Act. Moreover he also submits, even though it is beyond time still it is open for the parties to claim relief basing on the title. He relies on the decision in Tirumala Tirupati Devasthanams Vs. K.M. Krishnaiah, . Thus he submits that even assuming that it is beyond time the suit is still maintainable. The petitioner's Counsel takes the assistance from the same judgment at para 18 wherein Supreme Court has stated that if the suit is filed beyond 6 months the plaintiff cannot claim the relief of repossession.

6. I have perused the judgment under revision. The contention which is raised by the learned Counsel on behalf of the petitioner was not made an issue before the lower Court on the question of limitation. Though it was discussed by the lower Court at several places but the crux of the issue whether the suit is within limitation and whether it is filed after expiry of 6 months. It is a question to be decided. The lower Court simply stated that the suit is within time. This aspect has to be considered by the lower Court with reference to the decided cases.

7. The learned Counsel for the respondents however tries to submit that u/s 12 of the Limitation Act the day on which it has to be reckoned for the purpose of limitation has to be excluded. He also relies on the provisions of the General Clauses Act especially Section 9 and other provisions which are not considered by the lower Court. Be that as it may, since this is a substantial issue which goes

to the root of the matter, the lower Court ought to have framed the issue and decided the matter with reference to the evidence and also the legal provisions.

8. Under these circumstances, I am satisfied that the order is liable to be set aside and the same has to be remanded on the question of limitation. Accordingly, the judgment and decree of the Court below is set aside and the matter is remanded to the lower Court for framing the issue whether the suit is within time as contemplated u/s 6 of the Specific Relief Act and decide the issue after giving opportunity to the parties to lead evidence if they so choose. It is also open for the lower Court to consider the alternative submissions of the plaintiff that even the suit is beyond limitation, whether the suit can still be tried under the provisions of the Specific Relief Act. The above exercise shall be done within a period of 3 months from the date of receipt of this order.

9. The C.R.P. is accordingly allowed. No costs.